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U.S. Citizenship
and Immigration
Services

[redacted]

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DEC 0 2 2004

FILE: [redacted] Office: LOS ANGELES, CA Date:

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a citizen of the United States and seeks a waiver of inadmissibility in order to reside in the United States with her husband.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director,* dated October 17, 2003.

On appeal, counsel asserts that the applicant's spouse will suffer extreme hardship if separated from the applicant. Counsel contends that evidence was not provided previously because the applicant was incorrectly advised regarding preparation of her application. *Attachment to Form I-290B*, dated November 13, 2003.

In support of these assertions, counsel submits a copy of the United States birth certificate of the applicant's spouse; a copy of the marriage certificate for the applicant and her spouse; a statement of the applicant's spouse; copies of certified docket sheets for cases involving the applicant's spouse; proof of participation in Alcoholics Anonymous by the applicant's spouse; copies of identity and financial documents for the applicant and her spouse; copies of academic certifications earned by the applicant; photographs of the applicant and her spouse; copies of the resident alien cards and naturalization certificates issued to family members of the applicant's spouse; letters of support; a copy of the death certificate of the father of the applicant's spouse and a statement from the applicant.

The record reflects that during September 1997, the applicant obtained admission to the United States by presenting a Resident Alien Card belonging to another individual to immigration officials.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's spouse. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

The record fails to make any assertion of hardship imposed on the applicant's spouse by relocation to Mexico in order to remain with the applicant. The record reflects that the applicant's spouse resided in Mexico for a period of two years during which he met the applicant and was free of substance abuse. *Letter from Alejandro Villanueva*, dated December 8, 2003. The record reflects that the immediate family members of the applicant's spouse reside in the United States, however the record does not address the extreme hardship factors identified in *Matter of Cervantes-Gonzalez*, including but not limited to, the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Counsel fails to establish that the applicant's spouse will suffer extreme hardship if he remains in the United States in the absence of the applicant maintaining his proximity to family members. The AAO notes that, as a U.S. citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Counsel asserts that the applicant's spouse suffers from drug and alcohol abuse and that the presence of the applicant is needed to shield him from "bad influences." *Letter from Alejandro Villanueva* ("I am beating this battle for my wife."). The record reflects that the applicant's spouse has had relapses into drug abuse since returning from Mexico, including a drug-related arrest after the applicant's unlawful admission into the United States. *See Court of Compton Docket Sheet*, dated May 17, 1999. The record fails to establish, beyond the assertions of the applicant and her spouse, that the presence of the applicant in the United States is necessary for the sobriety of the applicant's spouse. The AAO notes that the record does not contain any medical or other objective evidence on which to base a finding of extreme hardship due to the alcoholism and/or drug abuse of the applicant's spouse.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community

ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra,* held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The AAO recognizes that the applicant's spouse would endure hardship as a result of separation from the applicant. However, his situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion. The AAO acknowledges that the record contains letters of support and evidence of academic accomplishments for the applicant. The AAO has reviewed this documentation, but notes that a weighing of the equities is not reached absent an initial determination of extreme hardship to a qualifying relative pursuant to section 212(i) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.